

IN SENATE OF THE UNITED STATES.

AUGUST 9, 1842.

Ordered to be printed.—To accompany bill H. R. 321.

Mr. PHELPS submitted the following

REPORT :

The Committee of Claims, to whom was referred the bill for the relief of the heirs and representatives of Josias Thompson, deceased (being House bill No. 321), respectfully report :

The claim, which it is the purpose of the bill to satisfy, arose in the following manner: Mr. Thompson was appointed superintendent of the section of the Cumberland road between Brownville and Wheeling, on the 8th of November, 1816, and served in that capacity till November 1, 1819, at a fixed salary of \$2,500 per annum. His duties were arduous, as he was charged not only with the superintendence of the work, but with the disbursements for the same, amounting, during the period of his agency, to \$763,610 07.

Upon the adjustment of his account at the Treasury, after his retirement from office, a balance was stated to be due from him to the United States of \$297 45. Mr. Thompson, in his statement of the account, claimed a balance, as due to him from the United States, of \$906 05. The difference between the two statements consisted of certain charges of Mr. Thompson against the United States, which were disallowed at the Treasury. In this state of things a suit was brought by the United States against Mr. Thompson, in the western district of Virginia, to recover the balance found due by the Department. He pleaded, as a set-off, the claims thus disallowed by the Department, and which constituted the difference between the two statements, and the jury upon the trial allowed the claims thus plead in offset; and not only found a verdict against the United States, but certified a balance to be due to Mr. Thompson of \$891 05.

The purpose of the memorial in this case is to obtain payment, through a special act of Congress, of the balance thus certified.

It is not insisted, as indeed it can not be with propriety, that the United States are bound by this certificate, nor even that it is to be regarded as prima facie evidence of indebtedness. The legitimate effect of the verdict is simply to extinguish the claim of the United States. To this extent it is conclusive, but as to the claim of Mr. Thompson against the United States, it is conclusive so far only as the set-off is allowed by way of defence merely. In this point of view the claim, so far as allowed, is satisfied and extinguished by the set-off; as to any balance remaining due, or supposed to be due from the United States, the certificate or finding of the jury is altogether extra-judicial and nugatory.

Thomas Allen, print.

The claim, therefore, derives no aid from this irregular and unauthorized proceeding, but must stand here upon its original and intrinsic merit.

The claim, as presented to Congress, consists of several items. It appears by the report of the Committee of Claims of the House of Representatives, to whom this subject was referred, that most of these items were rejected by that committee, and by the House. As the committee of the Senate concur in that rejection, for the reasons stated in that report, it is deemed unnecessary to enter upon a particular examination of that portion of the claim.

Two charges, however, and two only, are recommended for allowance; and the bill proposes an appropriation to satisfy the balance of those two items, after deducting from their amount the balance stated to be due the United States upon the amount as adjusted at the Department.

These charges are as follows, viz :

For office rent for three years, at \$100 per annum	\$300 00
Amount paid Wm. Killen for 229½ days' service as clerk, at \$1 50 per day, between the 7th September, 1818, and the 24th December, 1819	344 25
	<hr/> 644 25
From this amount is deducted the balance due the United States, if these charges are rejected, of	297 45
	<hr/> 346 80

And the difference is the amount proposed to be appropriated by the bill. There is, however, a difference between the bill and the report of the committee, as the sum specified in the former is \$340 80 only.

Your committee have no doubt that an office or fixed place of business was indispensable in the discharge of the duties of the superintendent, and the evidence seems to place it equally beyond doubt, that the services of a clerk were necessary to enable the superintendent to discharge those duties to the satisfaction of the Government and with safety to himself. But the committee entertain very serious doubt, whether, admitting the necessity of these expenditures, they are properly chargeable to the United States.

The allowance of \$2,500 per annum for the superintendence of less than 70 miles of this road appears to them a very liberal compensation, so liberal, indeed, as to create a presumption that it was intended to cover these contingencies. Whether this was, in fact, the intention in this instance, the committee have no very satisfactory means of determining. But where a fixed salary is attached to an employment of this kind, it is in their opinion to be taken and deemed a full compensation, unless an additional allowance for these objects is expressly provided by law, or at least promised where the compensation rests in executive discretion. There is no pretence of any provision by law to sustain the claim in this instance, nor is there any proof either of any executive regulation to the same effect, nor that the claimant had any rational ground to expect an allowance for these expenditures in addition to his salary. The right to extra compensation, therefore, depends upon the presumption to be made in the absence of any stipulation on the subject, and the committee are of opinion, that, upon common principles, the presumption is against the allowance. The undertaking is to perform the services for a stated compensation. The party who undertakes that performance, not only judges beforehand of his capacity to perform them unaided,

and of the necessity of assistance, but is left, afterward, to consult his own interest or convenience as to any assistance he may choose to employ. At all events he can demand no more than the compensation promised in the outset, and if no assurance is given of extra allowance for these objects none can be demanded.

A different rule on this subject would, in the opinion of the committee, be unjust to the Government as well as pernicious in its consequences. They can not distinguish between this case and any other of an employment by the Government at a fixed salary, and the allowance of the extra compensation in this instance would necessarily draw after it a similar allowance in all similar cases.

An attempt is made to sustain this claim upon the ground of an allowance made to Daniel Shriver who was also a superintendent on the same road, and which allowance is urged as furnishing a precedent for this. It appears, however, from the documents before the committee, that the allowance in that case was made by the President in view of the particular circumstances of the case, and was an allowance in gross for a variety of extra services and expenditures which do not appear in this case. The only resemblance between the two cases consists in the fact that in the allowance to Shriver, office-rent and clerk-hire are enumerated among a great variety of charges, but it is apparent that the principal consideration for that allowance was extra services performed by him, and among them the superintendence, for some time, of Thompson's section of the road; and it is by no means improbable that the expense for office-rent and clerk-hire was incurred in the course of such extra services. But, be this as it may, it is evident that the allowance to Shriver was a compromise of a variety of claims, some of which were, doubtless, well founded, and in the adjustment all his claims were enumerated as evidence that all were satisfied. It is obvious that such a compromise by the special direction of the President can not be regarded as a precedent for the allowance of clerk-hire and office-rent in all cases and as a matter of course.

The committee, therefore, recommend the indefinite postponement of the bill

